

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

DERRICK JONES, JEROME JONES,)	
MARRELL WITHERS and DARNELL)	
RUSAN,)	
)	
on behalf of themselves and all similarly)	Cause No. 4:21-cv-600
situated individuals,)	
)	
Plaintiffs,)	
)	
v.)	
)	
CITY OF ST. LOUIS, <i>et al.</i> ,)	
)	
Defendants.)	

DEFENDANTS' PROTECTIVE ORDER POSITION

Defendants, in response to the Court's May 5, 2023 Order, state the following: On February 23, 2023, Defendants filed a Motion for Protective Order related to Defendants' personnel files and use of force reports. Doc. 272. Defendants' concern, in their Memorandum in Support, related to Plaintiffs' counsel providing a deposition transcript to Taylor Harris, a reporter with the St. Louis Post-Dispatch. Doc. 273. On February 8, 2023, Ms. Harris wrote an article regarding Mr. Adrian Barnes and quoted extensively from his deposition transcript. Mr. Barnes sat for two depositions. The second deposition was dated January 12, 2023. Plaintiffs filed portions of Mr. Barnes' first deposition as an exhibit to a motion on December 1, 2022. Doc 221-2. The information that Ms. Harris wrote her article about was exclusively from the second deposition that did not take place until after Plaintiffs' previously mentioned filing.

Defendants request for a protective order is primarily related to personnel documents and testimony in depositions that relate to personnel matters. In our March 22, 2023 meet and confer,

Defendants' counsel expressed their concern with information being disclosed by Plaintiffs to members of the media. Defendants stated that information previously provided, such as personnel files and testimony related to personnel issues should be retroactively designated as confidential. As a compromise, Defendants offered to provide additional, irrelevant use of force reports, in exchange for Plaintiffs' consent to a protective order. A protective order should have been put in place earlier in the case but Defendants were under the impression that information would not be shared with individuals who are not parties to this action, in what appears to be an effort by Plaintiffs to litigate this matter in the press. It is not Defendants position that the additional use of force reports are relevant to claims or defense, nor are they proportionate to the needs of this case, as required under Rule 26.

As to how the protective order would related to the use of force reports, Defendants have concerns related to Plaintiffs' use of material during the course of this lawsuit. Some use of force reports contains the detainees' booking data that includes their driver's license number, booking photos, date of arrest, address, reason for incarceration, and other identifiable information. If that information was errantly provided in a Sunshine Request, that does not discount the fact that the information is protected under Missouri Law. Presumably, Plaintiffs will want a completely unredacted version of the use of force reports that may include this information. Many of these detained individuals are awaiting trial and have not been convicted of a crime. Disclosure of information without a protective order, that would prevent Plaintiffs from willfully misusing that information in light of Plaintiffs' recent conduct, would put these detainees at risk of having this information disclosed. Defendants have provided Plaintiffs with 520 use of force reports dated December 2018 to January 2022. Defendants are in possession of 1,150 use of force reports at this time. Plaintiffs have provided approximately 3000 pages of use of force reports dated

October 2020 through February 2021, March 2021, and April 2021. Plaintiff's are currently in possession of hundreds of use of force reports related to the use of OC spray and the majority of the relevant reports from January 2021 to January 2022, and are not entitled to additional reports.

Defendants pray this honorable Court enters Doc 273-5, Defendants' Protective Order, or some other protective order that the Court deems appropriate in the circumstance.

Respectfully submitted,

SHEENA HAMILTON,
CITY COUNSELOR

By: /s/ Adriano Martinez 69214(MO)
Associate City Counselor
1200 Market Street
City Hall Room 314
St. Louis, Missouri 63103
Phone: 314-622-4651
Fax: 314-622-4956
martineza@stlouis-mo.gov
Attorney for Defendants